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Frequently Asked Questions: Neighborhood Organizations and Elections

A Guide for Minneapolis Neighborhood Organizations prepared by
the City of Minneapolis Neighborhood and Community Relations Department

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Background

During election season, neighborhood organizations may be interested in working on increasing voter turnout, supporting voter registration or be requested to participate in or take positions on political issues, such as endorsing a candidate or supporting a ballot initiative. While most neighborhood organizations are aware that they cannot act in ways that support (or oppose) a candidate, they may not know what type of activity they can engage in, such as hosting non-partisan candidate forums or voter registration drives.

Neighborhood organizations can and do organize candidate forums, take positions on ballot initiatives, and work on voter registration drives and get-out-the-vote activities.

These types of activities can be essential strategies for building the organization and empowering the community. This guide is intended to provide a general reference for neighborhood organizations about what activity they can and cannot participate during the election season.

The IRS enforces the law by which “all section 501(c)(3) organizations are absolutely prohibited from directly or indirectly participating in, or intervening in, any political campaign on behalf of (or in opposition to) any candidate for elective public office.”ⁱ This prohibition applies regardless of whether a candidate is running for federal, state, or local office. *Violations can result in revocation of an organization’s tax-exempt status, as well as the imposition of certain excise taxes against the organization or managers who approved the improper activity.* When determining whether an organization has violated the prohibition on political intervention, the IRS considers the facts and circumstances of that particular case.

While all of the following apply to 501(c)(3) organizations, note that City funding also includes provisions that all funded neighborhood organizations may not engage in partisan political activities. The City uses the same rules as the IRS in our oversight of the political activities of organizations.

May our neighborhood organization provide a forum for a candidate to speak?

Yes, but an organization may allow a candidate to speak as a candidate *only* if the organization provides equal opportunity and access for all candidates. Neighborhood organizations must avoid activities that appear to favor or oppose one or more candidates for public office. If one candidate is allowed to speak at a meeting or event, that same opportunity must be provided to other candidates in equivalent forums. Neighborhood organizations can organize candidate forums, and have in the past. However, they should be sure to do so in a strictly non-partisan manner under section 501(c)(3) of the Internal Revenue Code. This means that they should ensure that each candidate is treated equally, and that no bias is evident towards one candidate or another in content of the sessions, how questions are phrased, etc.

What about working with candidates who at present are elected officials or have specific expertise related to our work?

In some circumstances, a candidate may be invited to speak or be present at a meeting in their capacity as an expert or as a current office holder. This is fine, but the organization should be clear that using the opportunity to stump for their campaign *in any way* (for example, mentioning their campaign website's address or handing out buttons) is not allowed AND in such cases, there are clear basic rules to follow:

- The candidate should be chosen to speak only for reasons that are fully outside the individual's candidacy (i.e., as a public office holder who will address immediately pressing issues);
- The candidate must speak only in their capacity as an expert or office holder;
- **There must not be ANY mention by the organization's representatives or the candidate of their campaign for office, or of the upcoming election and any mention by attendees should be cut off and objected to by the organization's representatives with the clear explanation that allowing such discussion is in violation of the organization's tax-exemption and is not allowed;**
- **There can be no campaign activity in connection with the candidate's presence at the meeting or allowed outside the meeting; and**
- **The atmosphere of the event must be respectful of the organization's role as fully nonpartisan with respect to any and all candidates for elective office.**

May a candidate participate in a neighborhood organization event, such as a board or community meeting?

Yes, a candidate can participate in a neighborhood event **in the same manner as non-candidates**. With a candidate in attendance, the organization must observe each of the final three bullet points in the preceding section of this guide (they have been placed in bold).

May our neighborhood organization participate in voter education, voter registration and get-out-the-vote activities?

The IRS says "yes, if they are conducted in a neutral non-partisan manner, for example, without reference to any candidate or political party. However, voter education or registration activities conducted in a biased manner that favors (or opposes) one or more candidates is prohibited."ⁱⁱ Note that get-out-the-vote activities should not be undertaken during or as part of candidate forums nor in the presence of any candidates.

While many non-501(c)(3) tax-exempt organizations can and do provide voter guides, the type of voter guides that 501(c)(3) organizations may produce (or distribute if done by others) must adhere to the overall 501(c)(3) candidate participation/intervention prohibition. Thus, neighborhood organizations will find that voter guides available to

them will be read as violating the prohibition on political campaign interventions if they were to focus on a single issue or a narrow range of issues, or if the questions in the guide are biased. If a neighborhood organization wants to work with voter guides, the questions presented must be neutral in not presenting a more desirable outcome (for example, NOT “would you expand funding for the police department?” but “what suggestions do you have for maintaining the police department’s role in public safety?” Furthermore, questions in a voter guide should be of sufficient number to represent a broad range of issues of interest to residents. Generally:

- Questions in the guide should be fair and unbiased in structure and content;
- The questions provided in the guide should not be edited, but must reflect what was provided to all candidates;
- Candidates should be provided a reasonable amount of time to respond;
- All candidates for a particular office should be covered (a possible exception for candidates who have no chance of gaining anything but minimal public support does exist);
- The number of questions and subjects covered should cover many major issues of interest to residents.

May our neighborhood organization work on ballot initiatives?

Yes, as long as the ballot initiative work can be undertaken in ways that does NOT appear to promote one or more candidates or political parties. The IRS notes that “section 501(c)(3) organizations may take positions on public policy issues, including issues that divide candidates in an election for public office.”ⁱⁱⁱ However, section 501(c)(3) organizations must avoid any issue advocacy that functions as political campaign intervention. The prohibition against election “participation or intervention” by 501(c)(3) organizations does NOT extend to **lobbying** the public on upcoming ballot initiatives.

Working on a ballot initiative is a form of direct lobbying that is allowed for 501(c)(3) organizations, so long as the organization’s overall lobbying effort does not constitute a “substantial part” of the organization’s activities. According to the IRS, “in general, no organization may qualify for section 501(c)(3) status if a substantial part of its activities is attempting to influence legislation (commonly known as lobbying).”^{iv} The IRC [Internal Revenue Code] defines grassroots lobbying as attempts to influence legislation by affecting the opinions of the general public. A 501(c)(3) organization may engage in some lobbying, but too much lobbying activity risks loss of tax-exempt status.

The word “substantial” is not defined in the Internal Revenue Code, but there are two options by which the IRS determines whether an organization is exceeding the limit.

- The first option is the “No Substantial Part Test.” Under this “test,” the IRS and the courts consider ALL the facts and circumstances of each case to determine if an

organization's lobbying efforts are "substantial." This brings into consideration not only the alleged lobbying activities but also the subject matter (whether the issue at hand is related to the purpose of the organization), the size of expenditures and the amount of time spent by paid staff and volunteers.^v

- A second option that provides more clarity is for the organization to file under Code Section 501(h), electing to have lobbying limits applied as set out by that Code Section. Under this option, 501(c)(3) organizations must track their expenditures (as opposed to time or comparative "levels") by which they make grassroots or direct lobbying *communications*, including in such costs allocation for administrative and overhead expenses. An organization's total lobbying expenditures may not exceed 20% of the first \$500,000 of the organization's overall expenditures for the year, 15% of the next \$500,000, etc. (Most neighborhood organizations in Minneapolis are well below these expenditure levels, so assume not more than 20% of total expenditures.) Expenditures on lobbying communications will include costs of doing related research, drafting, reviewing, printing, publishing, staff time, etc.^{vi}

Organizations may do unlimited educational activities around the subject of a ballot initiative, but if those activities appear to encourage voting for or against a ballot initiative they will need to be included in measuring "allowable" lobbying under the relevant test, as addressed above.

Are the neighborhood organization's leaders prohibited from working on campaigns?

No. According to the IRS, "the political campaign intervention prohibition is not intended to restrict free expression on political matters by leaders of organizations speaking for themselves, as individuals. Nor are leaders prohibited from speaking about important issues of public policy."^{vii} However, neighborhood organization leaders must not make partisan comments at organization events or functions, or in organization publications. When individuals participate in events and activities outside of their time in serving the neighborhood organization, they should make clear that comments or endorsements are personal and do not reflect the position of the organization.

Can a neighborhood organization accept political advertising in its newsletter or website?

A neighborhood organization may accept political ads in newsletters and sell services they normally provide to the public to campaign committees or candidates, but only on the same terms that such services are made available to the public. When providing ad space or services, neighborhood organizations should take steps to ensure that these are equally available to (and made accessible to) all candidates. In all such cases:

- The same opportunity should be provided to all candidates;
- The services should only be those normally provided to the general public (i.e., the newsletter or services offered should be an ongoing and customary affair of

the organization, not produced or available for purposes of an election campaign); and

- The service fees should be the customary fees charged; the advertising rates should be the general rate charge.

Can a neighborhood organization provide lists of names to a candidate?

The same rules as those for advertising space and selling services, addressed immediately above, apply. If you sell lists to one candidate, that same opportunity **MUST** be provided to all candidates, as well as to the general public.

Endnotes

- i See [http://www.irs.gov/Charities-&-Non-Profits/Charitable-Organizations/The-Restriction-of-Political-Campaign-Intervention-by-Section-501\(c\)\(3\)-Tax-Exempt-Organizations](http://www.irs.gov/Charities-&-Non-Profits/Charitable-Organizations/The-Restriction-of-Political-Campaign-Intervention-by-Section-501(c)(3)-Tax-Exempt-Organizations)
- ii See http://www.irs.gov/pub/irs-tege/501c3_polcampfaqs.pdf
- iii See again http://www.irs.gov/pub/irs-tege/501c3_polcampfaqs.pdf
- iv See <http://www.irs.gov/Charities-&-Non-Profits/Lobbying>
- v See <http://www.irs.gov/Charities-&-Non-Profits/Measuring-Lobbying:--Substantial-Part-Test>
- vi See <http://www.irs.gov/Charities-&-Non-Profits/Measuring-Lobbying-Activity:--Expenditure-Test>
- vii From <http://www.irs.gov/pub/irs-news/fs-06-17.pdf>